

**UNITED STATES DISTRICT COURT  
IN THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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VERONICA OSBURN,

Plaintiff,

-vs.

MIDLAND FUNDING LLC,  
MIDLAND CREDIT MANAGEMENT,  
INC., ENCORE CAPITAL GROUP,  
INC.

Defendants.

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**COMPLAINT AND JURY  
DEMAND**

Plaintiff, Veronica Osburn, through counsel, Stephen A. Thomas, PLC, by

Stephen A. Thomas states the following claims for relief:

**JURISDICTION**

1. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and pursuant to 15 U.S.C. § 1692k(d), and pursuant to 28 U.S.C. § 1367 for pendent state law claims, which are predicated upon the same facts and circumstances that give rise to the federal causes of action.

2. This action arises out of Defendant's repeated violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA").

3. Venue is proper in this District because the acts and transactions occurred here, Plaintiff resides here, and Defendants transacts business here.

## **PARTIES**

4. Plaintiff Veronica Osburn is a natural person who resides in the City of Dearborn Heights, County of Wayne, State of Michigan, and is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

5. Defendant Midland Funding LLC (“MF”) is a Delaware limited liability company with its principal place of business at 3111 Camino Del Rio N, Suite 1300, San Diego, California 92108. The registered agent for MF in Michigan is CSC-Lawyers Incorporating Service (Company), 601 Abbott Road, East Lansing, Michigan 48823. MF is engaged in the business of purchasing and collecting defaulted and charged off consumer debts. MF uses interstate commerce and the mails in a business the principal purpose of which is the collection of debts. MF regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. MF is a “debt collector” as the term is defined and used in the FDCPA. MF is a “regulated person” as the term is defined and used in the MCPA.

6. Defendant Midland Credit Management, Inc. (“MCM”) is a Kansas corporation with its principal place of business at 3111 Camino Del Rio N, Suite 1300, San Diego, California 92108. The registered agent for MCM in Michigan is CSC-Lawyers Incorporating Service (Company), 601 Abbott Road, East Lansing, Michigan 48823. MCM is engaged in the business of collecting defaulted and charged off consumer debts that are held in the name of defendant Midland Funding LLC. MCM uses interstate commerce and the mails in a business the principal purpose of which is the collection of debts. MCM regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. MCM is a “debt collector” as the term is

defined and used in the FDCPA. MCM is licensed (Nos. 2401002426, 2401002428, 2401002429 and 2401002431) as a “collection agency” by the State of Michigan pursuant to the Michigan Occupational Code, M.C.L. § 339.901 *et seq.*

7. Defendant Encore Capital Group, Inc. (“Encore”) is a Delaware corporation, with its principal place of business at 3111 Camino Del Rio N, Suite 1300, San Diego, California 92108. Encore is a publicly traded company. The registered agent for Encore is Corporation Service Company, 2710 Gateway Oaks Drive, Suite 150N, Sacramento, California 95833. Encore is engaged in the business of purchasing and collecting defaulted and charged off consumer debts. Encore uses interstate commerce and the mails in a business the principal purpose of which is the collection of debts. Encore regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Encore is a “debt collector” as the term is defined and used in the FDCPA. Encore is a “regulated person” as the term is defined and used in the MCPA.

### **VENUE**

8. The transactions and occurrences which give rise to this action occurred in Wayne County.

9. Venue is proper in the Eastern District of Michigan.

### **GENERAL ALLEGATIONS**

10. That Defendants attempted to collect a debt in the amount of \$562.51, an amount which had already been discharged in bankruptcy, from a Verizon Wireless account.

11. That on April 26, 2011, Plaintiff Veronica Osburn converted her Chapter 13 Bankruptcy Case Number 06-54382-wsd to a Chapter 7 Bankruptcy, and all listed and unlisted creditors as of that date were discharged as a matter of law.

12. That Plaintiff Veronica Osburn later received her Chapter 7 Bankruptcy discharge on July 26, 2011.

13. That Defendants contacted Plaintiff Veronica Osburn through a collection letter dated March 16, 2013, a date which was one year and seven months following Plaintiff's bankruptcy discharge. See Exhibit A.

14. That Plaintiff Veronica Osburn has suffered emotional distress as a result of the violation of the Fair Debt Collection Practices Act.

### **COUNT I - FAIR DEBT COLLECTION PRACTICES ACT.**

15. Plaintiff incorporates the preceding allegations by reference.

16. At all relevant times Defendants, in the ordinary course business, regularly engaged in the practice of collecting debts on behalf of other individuals or entities.

17. Plaintiff is a "consumer" for purposes of the FDCPA and the account at issue in this case is a consumer debt.

18. Defendants are "debt collector" under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692a(6).

19. Defendants' foregoing acts in attempting to collect this debt violated 15 U.S.C. § 1692 et seq.

20. The Plaintiff has suffered economic, emotional, general and statutory damages as a result of these violations of the FDCPA.

**COUNT II - VIOLATION OF THE MICHIGAN OCCUPATIONAL CODE.**

21. Plaintiff incorporates the preceding allegations by reference.

22. Defendants are "collection agency" as that term is defined in the Michigan Occupational Code ("MOC"), M.C.L. § 339.901(b).

23. Plaintiff is a "debtor" as that term is defined in M.C.L. § 339.901(f).

24. Defendants' foregoing acts in attempting to collect this debt violated M.C.L. § 339.915.

25. Plaintiff has suffered damages as a result of these violations of the Michigan Occupational Code.

26. These violations of the Michigan Occupational Code were willful.

**COUNT III - VIOLATION OF THE MICHIGAN COLLECTION PRACTICES ACT.**

27. Plaintiff incorporates the preceding allegations by reference.

28. Defendants are "regulated person" as that term is defined in the Michigan Collection Practices Act ("MCPA"), at M.C.L. § 445.251.

29. Plaintiff is a "consumer" as that term is defined at M.C.L. § 445.251.

30. Defendants' foregoing acts in attempting to collect this debt violated M.C.L. § 445.252.

31. Plaintiff has suffered damages as a result of these violations of the MCPA..

32. These violations of the MCPA were willful.

#### **COUNT IV – INVASION OF PRIVACY BY INTRUSION UPON SECLUSION.**

33. Plaintiff incorporates the preceding allegations by reference.

34. The restatement of Torts, Second, § 652(b) defines intrusion upon seclusion, "One who intentionally intrudes upon the solitude or seclusion of another, or his private affairs or concerns, is subject to liability to the other for invasion of privacy, if the intrusion would be highly offensive to the reasonable person."

35. Michigan further recognizes the Plaintiff's right to be free from invasions of privacy; thus Defendants violated Michigan state law.

36. The conduct of the Defendants in engaging in the illegal collection activities resulted in multiple invasions of privacy in such a way as would be considered highly offensive to a reasonable person.

37. As a result of the intrusions and invasions, the Plaintiff is entitled to actual damages in an amount to be determined at trial from Defendants.

38. All acts of Defendants and its agents were committed with malice, intent, wantonness, and recklessness, and as such, Plaintiff is entitled to punitive damages.

#### **COUNT V - INTENTIONAL (OR NEGLIGENT) INFLICTION OF EMOTIONAL DISTRESS.**

39. Plaintiff incorporates the preceding allegations by reference.

40. The acts, practices and conduct engaged in by the Defendants vis-a-vis the Plaintiff were so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.

41. The foregoing conduct constitutes the tort of intentional infliction of emotional distress under the laws of the State of Michigan.

42. Defendants could reasonably foresee their conduct would cause mental anguish and severe emotional distress to Plaintiff.

43. Plaintiff did indeed suffer mental anguish and severe emotional distress including post-traumatic stress, paranoia, and depression.

### **DEMAND FOR JURY TRIAL**

Plaintiff demands trial by jury in this action.

### **DEMAND FOR JUDGMENT FOR RELIEF**

Wherefore, Plaintiff requests that the Court grant her the following relief against the Defendants:

- a. Actual damages.
- b. Statutory damages.
- c. Treble damages.
- d. Statutory costs and attorney fees.

March 13, 2014

Respectfully submitted,

/s/ Stephen A. Thomas  
STEPHEN A. THOMAS P43260  
Attorney for Plaintiff  
645 Griswold St., Suite 1113  
Detroit, Michigan 48226  
313-965-2265  
[sathomasplccmecf@aol.com](mailto:sathomasplccmecf@aol.com)

# Exhibit A

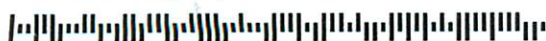




Midland Credit Management, Inc.

8875 Aero Drive  
Suite 200  
San Diego, CA 92123

03-16-2013

Veronica D Osburn  
5745 Mayburn St  
Dearborn Heights, MI 48127-3207

Dear Veronica,

Midland Credit Management, Inc., understands a one-size payment plan doesn't fit everyone's needs. Special offers are now available to help you resolve your unpaid Verizon Wireless account.

Reduce the amount you owe and resolve your bill with these 2 options:

- 1** Make your payment by 04-15-2013 and receive 60% off  
Your payment will be reduced to \$225.00 if you pay it in full by 04-15-2013. That's 60% off your current balance due.
- 2** Make 6 monthly payments and receive 20% off  
Your payment will be reduced to \$450.01 if you make 6 monthly payments of \$75.00 by 04-15-2013. That's 20% off your current balance due.

If you are unable to make the payments required with the two options above, we may be able to set up payments as low as \$50 each month to help you resolve this past due bill.

We can help you get back on track. When you call, our skilled Account Managers will help you find a solution that fits your budget and your timeline.

Don't miss this opportunity to reduce the amount you owe and resolve this past due bill. We look forward to assisting you.

Sincerely,

H. Torres  
Division Manager

P.S. We've included a free educational brochure for you, *Why paying your bills is so important to a good credit report*.

*We can help you  
reduce your past due  
balance with  
Verizon Wireless  
and get your finances  
back on track.*

**Take your first steps  
towards repayment today!**

- Once you make a payment, interest will stop being applied to your account
- You will save up to \$337.51 if you choose Option 1
- Offer expiration date: 04-15-2013
- After receiving your final payment, we will consider the account **PAID IN FULL** and the three major credit reporting agencies will be updated accordingly.

Current Balance: \$562.51  
Payment Due Date: 04-15-2013Original Creditor:  
Verizon Wireless  
Original Account No.:  
068100434600001Current Owner:  
Midland Funding LLC  
MCM Account No.:  
8534339587Hours of Operation:  
M - Th 6am - 7pm  
Fri 6am - 5pm  
Sat 6am - noon PSTCall:  
(800) 282-2644Click:  
[www.midlandcreditonline.com](http://www.midlandcreditonline.com)Mail:  
Payment coupon below**PLEASE SEE REVERSE SIDE FOR IMPORTANT INFORMATION.****Payment Coupon for:**Veronica D Osburn  
5745 Mayburn St  
Dearborn Heights, MI 48127-3207**PAYMENT DUE:**  
04-15-2013

Account: 8534339587

**Amount Enclosed:**

\$

☒ Yes, I want to reduce my past due bill with:

- ☐ **OPTION 1**  
Make your payment by 04-15-2013 and receive 60% off
- ☐ **OPTION 2**  
Make 6 monthly payments of \$75.00 and receive 20% off

**If you're paying by check or money order:**

- Please make your check/money order payable to Midland Credit Management.
- Use the enclosed pre-paid envelope to send in your payment to:  
PO Box 60578, Los Angeles CA 90060-0578

**If you'd like to pay with a credit or debit card:**

- Please call (800) 282-2644

**If you'd like to set up a different payment option**

- Please call (800) 282-2644. We can help you set up a monthly payment plan of as low as \$50 each month to resolve this past due bill.

12 8534339587 8 0022500 041513 1

A684 ED01

**Please understand this is a communication from a debt collector. This is an attempt to collect a debt. Any information obtained will be used for that purpose.**

Calls to and/or from this company may be monitored or recorded.

As of the date of this letter you owe the amount listed in this letter as Current Balance. The offer to settle this account for the discount(s) offered in this letter remains open until 04-15-2013. If the offer to settle this account is not accepted on or before 04-15-2013, the amount you owe may be greater because of interest that may vary from day to day. To obtain an exact payoff amount, or for further information, please call one of our Account Managers at (800) 282-2644.

**MAIL PAYMENTS TO:** P.O. Box 60578, Los Angeles, CA 90060-0578

**MAIL CORRESPONDENCE BUT NO PAYMENTS TO:** MCM's business address at 8875 Aero Drive, Suite 200, San Diego, CA 92123

**We are required under state law to notify consumers of the following rights. This list does not contain a complete list of the rights consumers have under state and federal law:**

**IF YOU LIVE IN COLORADO, THIS APPLIES TO YOU:**

FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE **WWW.COLORADOATTORNEYGENERAL.GOV/CA**

A consumer has the right to request in writing that a debt collector or collection agency cease further communication with the consumer. A written request to cease communication will not prohibit the debt collector or collection agency from taking any other action authorized by law to collect the debt.

Midland Credit Management has a Colorado office with the following address and telephone number: 80 Garden Center, Suite 3, Broomfield, CO 80020. Telephone number: (303) 920-4763.

**Only physical in-person payments may be accepted at this office location. All payments made via mail should be sent to the following address:** P.O. Box 60578, Los Angeles, CA 90060-0578

**IF YOU LIVE IN MASSACHUSETTS, THIS APPLIES TO YOU:**

NOTICE OF IMPORTANT RIGHTS: YOU HAVE THE RIGHT TO MAKE A WRITTEN OR ORAL REQUEST THAT TELEPHONE CALLS REGARDING YOUR DEBT NOT BE MADE TO YOU AT YOUR PLACE OF EMPLOYMENT. ANY SUCH ORAL REQUEST WILL BE VALID FOR ONLY TEN (10) DAYS UNLESS YOU PROVIDE WRITTEN CONFIRMATION OF THE REQUEST POST MARKED OR DELIVERED WITHIN SEVEN (7) DAYS OF SUCH REQUEST. YOU MAY TERMINATE THIS REQUEST BY WRITING TO MIDLAND CREDIT MANAGEMENT, INC.

**IF YOU LIVE IN MINNESOTA, THIS APPLIES TO YOU:** This collection agency is licensed by the Minnesota Dept. of Commerce.

**IF YOU LIVE IN NEW YORK CITY, THIS APPLIES TO YOU:** New York City Department of Consumer Affairs License Number 1140603, 1207829, 1207820, 1227728

**IF YOU LIVE IN NORTH CAROLINA, THIS APPLIES TO YOU:** North Carolina Department of Insurance Permit #101659, #4182, #4250, and #3777. Midland Credit Management, Inc. 8875 Aero Drive, Suite 200, San Diego, CA 92123

**IF YOU LIVE IN TENNESSEE, THIS APPLIES TO YOU:** This collection agency is licensed by the Collection Service Board of the Department of Commerce and Insurance.

**IF YOU LIVE IN CALIFORNIA, THIS APPLIES TO YOU:**

The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or <http://www.ftc.gov>.

"Nonprofit credit counseling services may be available in the area."